

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed May 26, 2010. At the time of the Office Action, Claims 1-17 and 26-27 were pending in the Application and stand rejected. Applicant has amended several Independent Claims in an effort to expedite the prosecution of the instant case. The amendments are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

35 U.S.C. §102 Rejections

The Examiner rejects Claims 1-9 and 26 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,185,073 issued to Gai et al. (hereinafter "*Gai*"). This rejection is respectfully traversed for the following reasons.

*Independent Claim 1 is Patentable over Gai*

Applicant respectfully reminds the Examiner that a claim is anticipated only if each element as set forth in the claim is either found, expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

Independent Claim 1, as amended, recites “...*the object is part of a document captured based on a capture rule that defines which objects are to be captured, wherein the capture rule is part of a default rule set for a capture system configured to monitor network traffic, and wherein a determination is made based on the capture rule to discard or to store the document, and wherein the capture rule identifies a first internet protocol (IP) address from which the document was sent and a second IP address associated with an intended destination of the document.*”

No reference of record, including *Gai*, offers an architecture in which these activities occur. First, there is nothing in the cited references for a capture rule specifying which objects are to be captured. Note that such capture rules do not equate to crude filtering mechanisms. Second, no reference discloses ***the capture rule being part of a default rule set for a capture system configured to monitor network traffic***. Third, no reference outlines a capture rule that designates which documents would be stored or discarded. Fourth, no reference discloses how the capture rule identifies a first internet protocol (IP) address from which the document was sent and a second IP address associated with an intended destination of the document.

At the passages cited by the Examiner (of *Gai*) for potentially relevant discussions related to these limitations, there is simply nothing that discloses such capabilities. Again, these important limitations are provided for in Independent Claim 1, but no reference of record includes such elements. Applicant has reviewed *Gai* and found nothing that would be relevant to such operations. For at least these reasons, each of the Independent Claims is allowable over the cited reference. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons. Notice to this affect is respectfully requested.

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<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

Section 103 Rejection

Claims 10-17 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Gai* and in view of “Cryptographic Hash Functions” issued to Bart Preneel (hereinafter “*Preneel*”). Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.<sup>5</sup>

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims. This has been evaluated extensively above in the preceding §102 analysis. For at least these reasons, all of the claims are patentably distinct. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

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<sup>5</sup> See M.P.E.P. §2142-43.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

An Information Disclosure Statement is being filed simultaneously herewith. The Request for Continued Examination fee in the amount of \$810 is being paid concurrently herewith via the Electronic Filing System (EFS) by way of Deposit Account No. 50-4889 authorization. No additional fees are believed due. However, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214-823-1241.

Respectfully submitted,

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